SUPREME COURT OF THE UNITED STATES.

October Term, 1897. No. 142.

A Howard Ritter, Executor of William M. Runk, deceased, a citizen of the State of Pennsylvania, Plaintiff in Error,

vs.

The Mutual Life Insurance Company of New York, a corporation organized under the laws of and a citizen of the State of New York, Defendant in Error.

PAPER BOOK OF PLAINTIFF IN ERROR.

ON A WRIT OF *Certiorari* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT. IN ERROR TO THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

I. HISTORY OF THE CASE.

This action was brought on February 10th, 1893, upon six policies of life insurance aggregating $75,000, issued November 10th, 1891, upon the life of William M. Runk, who in his lifetime was a member of the firm of Darlington, Runk & Co., leading retail dry goods merchants in the city of Philadelphia. Mr. Runk died October 5th, 1892, from the effects of a pistol shot wound, which, according to the verdict of the Coroner's jury, was inflicted by himself while suffering under a temporary aberration of the mind.

The policy contained no clause qualifying the obligation of the company to pay upon the death of the assured in case of "suicide" or "death by his own hand."

At the trial the defense in the opening was rested principally upon an allegation that the policies had been obtained by Runk with the fraudulent intent, conceived prior to so obtaining the insurance, of killing himself for the benefit of his creditors and his family. Had this defense been the issue, on which the case was submitted to the jury, this writ of error would not have been taken. But the defendant failed to adduce evidence upon which, on this issue, the jury coud have properly found a verdict in its favor, and also failed to secure the admission in evidence of the application made by Runk upon which the policies issued, which application *did* contain a warranty against suicide for two years after the date of the policy, but was not actually annexed to the policy as required by the statute of 11th May, 1881. The defense was then shifted to the bald proposition of law that the suicide of Mr. Runk, without any express clause to that effect, avoided the policy unless the plaintiff proved that Runk was insane. The court, expressing great doubt as to the correctness of the ruling, sustained this proposition, and the plaintiff in rebuttal adduced considerable evidence tending to establish insanity. In the charge of the court the definition of insanity was drawn so narrowly, the burden of proving insanity was placed with such emphasis upon the plaintiff, and the comments of the learned judge upon the evidence were so adverse that the jury found a verdict for the defendant.

The assignments of error raise three principal questions:—

First.—Does the mere fact that he whose life is insured dies by his own hand avoid the policy—there being no clause in the policy limiting the absolute obligation of the company to pay upon the happening of the death and no evidence tending to prove fraud in effecting the insurance?

(Sixth and eighth assignments.)

Second.—If it be the law that suicide by a sane man avoids a policy upon his life, what is the definition of insanity which relieves from that consequence?

[In the brief which follows we endeavor to show that the definition given in the charge in this case does not accord with the definitions heretofore approved by the Supreme Court of the United States.]

(Seventh, ninth, tenth, and eleventh assignments.)

Third.—Was there any evidence which would justify the jury in finding that, prior to taking out the insurance, Runk had conceived the fraudulent design of effecting the policies and of taking his own life for the benefit of his creditors and family?

[While both counsel and court, as appears by the charge, regarded this last question as no longer an issue in the case, the refusal to affirm plaintiff's points, drawn with reference to this issue, was an error calculated to greatly prejudice the minds of the jury in determining the only question finally submitted to them, namely, the insanity of the insured.]

(First, second, third, fourth, and fifth assignments.)

II. ASSIGNMENTS OF ERROR.

1. The admission of the evidence of Ralph F. Cullinan contained in the following offer:—

"MR. JOHNSON:—I propose to prove the date anterior to the issuance of this policy of the appropriation by Mr. Runk of the securities of the City Mission in his hands as treasurer.

"(Objected to, on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one's own life.)

"THE COURT:—This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time. The court

will have to hear it, and reserve for after consideration what weight it should have or whether it should have any. We may be asked to rule it out, and, if so, we will consider it."

2. The admission of the evidence of William G. Hopper contained in the following offer:—

"MR. JOHNSON:—I propose to prove that this witness is a creditor of the estate to the amount of $7756.88, which credit is due to him in the course of speculative stock transactions of William M. Runk, and also to prove the extent of those speculative transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely."

3. The refusal of the court to affirm plaintiff's first point, which point was as follows:—

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon, with the intention of defrauding the company defendant issuing the same."

4. The refusal of the court to affirm plaintiff's second point, which point was as follows:—

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

5. The refusal of the court to affirm plaintiff's third point, which point was as follows:—

"The evidence upon the part of the defendant does not warrant any inference of fact which constitutes a defense in law to the plaintiff's right to recover the amount due upon the said policies."

6. The refusal of the court to affirm plaintiff's fourth point, which point was as follows:—

"The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies."

And the answer thereto as follows:—

"The fourth point is also disaffirmed, for the reason given in answering the defendant's first point, of which I will speak directly."

7. The answer to plaintiff's fifth point, which point and answer are as follows:—

"If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self destruction will not of itself prevent recovery upon the policies.

"This is affirmed. I will say, however, that we must understand what is meant and intended by the term 'moral character of his act.' It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be misunderstood.

"We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others; in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not."

8. The affirmance by the court of the defendant's first point, and the answer of such point, which point and answer are as follows:—

"There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of sound mind.

"This point is affirmed.

"The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed, raise the same question; and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court in this country or in England.

"When the points were presented I said in your presence that, in the absence of authority or of custom on the part of insurance companies or in the business of insuring, bearing on the subject, I would feel little hesitation in holding that suicide by the insured, while in a sane condition of mind, constitutes a defense to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting, and there is no evidence before the court of any custom in the business of insurance bearing on this subject.

"I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others."

9. The learned court erred in charging the jury as follows:—

"I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit."

10. The learned court erred in charging the jury as follows:—

"If the opinion is based on the fact alone that he committed suicide it is of no value."

11. The learned court erred in charging the jury as follows:—

"While I thus submit the question and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong."

BRIEF OF ARGUMENT.

FIRST.—DOES THE TAKING OF HIS OWN LIFE AVOID A POLICY OF INSURANCE UPON THE LIFE OF THE SUICIDE?

This novel and important question is raised by the sixth and eighth assignments of error, which may be considered together.

The sixth assignment is as follows:—

"The refusal of the court to affirm plaintiff's fourth point, which point was as follows:—

> " 'The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies.' "

And the answer thereto as follows:—

> "The fourth point is also disaffirmed, for the reason given in answering the defendant's first point, of which I will speak directly."

The eighth assignment is as follows:—

The affirmance by the court of the defendant's first point, and the answer of such point, which point and answer are as follows:—

> "There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of sound mind.
>
> "This point is affirmed.
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> "The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed, raise the same question; and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court in this country or in England.
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> "When the points were presented I said in your presence that, in the absence of authority or of custom on the part of insurance companies or in the business of insuring bearing on the subject, I would feel little hesitation in holding that suicide by the insured, while in a sane condition of mind, constitutes a defense to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting, and there is no evidence before the court of any custom in the business of insurance bearing on this subject.
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> "I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others."

The question raised by these assignments of error is whether a policy of insurance, taken out in good faith for the benefit of the estate of the insured, with no clause or

condition limiting the obligation of the company to pay if the insured commits suicide, is avoided by the fact that the insured commits suicide, under the pressure of subsequently-occurring misfortunes.

The learned judge who tried the case correctly stated that this precise question has never heretofore arisen and been decided in any court; but in a leading case, in which the question did not directly arise upon the record, this court has expressed the opinion that suicide, without a condition or clause so providing, does not avoid a policy of life insurance, and expressed its disapproval of a dictum of Chief Justice Black while in the Supreme Court of Pennsylvania in the case of Hartman *vs.* Ins. Co., 21 Pa. St., 466, which seemed to support the other view.

In Life Insurance Company *vs.* Terry, 15 Wallace, 580, this court, repudiating the English rule of Borradaile *vs.* Hunter, held that even if the policy contained a clause against suicide or death by his own hand, such clause did not apply if the insured was insane. In the opinion Mr. Justice Hunt criticises the language of Judge Black, above referred to:—

> "In Hartman *vs.* Keystone Insurance Company, the doctrine of Borradaile *vs.* Hunter was adopted with the confessedly unsound addition that suicide would avoid a policy although there were no condition to that effect in the policy."

We believe it is understood by the profession that all opinions filed in the Supreme Court of the United States are passed upon by each one of the justices concurring in the judgment, and are not, as in some State courts, the expression of the views of a single judge deputed to write the opinion when the judgment has been agreed upon by the court.

Upon the question raised upon these assignments of error, therefore, this court has already made a statement of the law in accordance with the view for which we contend, and expressed its disapproval of the expressions of Chief Justice Black as an unsound addition to the rule even as adopted in the English courts.

Furthermore, even the ruling of Chief Justice Black in Hartman *vs.* Ins. Co. does not go to the extent which the court below went in this case. It is to be noted that the language of Chief Justice Black was predicated of a case where the insured, within twenty-four hours after effecting the policy of insurance, committed suicide by taking arsenic purchased on the same visit to the city of Harrisburg during which his policy was taken out. All the circumstances of the case indicated a purpose to commit suicide formed prior to the making of the contract, in which case no one doubts that the contract is tainted with fraud in its inception; and it was upon this state of facts, and upon a policy which was by its expressed terms void if the deceased died by his own hand, that in Hartman *vs.* Keystone Ins. Company, 21 Pa. St., 466, it was said:—

> "The conditions of the policy are that it shall be null and void 'if the assured shall die by his own hand, in or in consequence of a duel, or by the hands of justice,' &c. The plaintiff argues that the first clause here quoted does not embrace suicide committed in swallowing arsenic. Where parties have put their contract in writing their rights are fixed by it. But the contract is what they meant it to be, and when we can ascertain their meaning from the words they have used, we must give it effect. One rule of interpretation is, that we must never attribute an absurd intent if a sensible one can be extracted from the writing. No absurdity could be greater than a stipulation against s[illegible]cide in a duel. The words 'die by his own hand' must therefore [illegible]e disconnected from those which follow. Standing alone, the[illegible] mean any sort of suicide.
>
> "Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy, a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone."

The report of the case does not give the charge of Judge Pearson in the court below, but it may be assumed that the charge was given in connection with the undisputed facts of the case, which necessitated the conclusion that the suicide was simply the carrying out of the preconceived fraudulent intent with which the policy was procured. And this case (Hartman *vs.* Insurance Company) has not been followed by the Supreme Court

in any case in Pennsylvania, but, on the contrary, has been expressly limited in the only case in which the subject was touched upon. American Life Insurance Co. *vs.* Isett's Admrs., 74 Pa., 176 (1873). "The case of Hartman *vs.* Insurance Company is not in conflict with the charge of the court. It merely holds if the insured committed suicide by swallowing poison he died by his own hand. It does not profess to hold that self destruction by the insured in all cases avoids the policy."

It has never been doubted that a policy, taken out with the preconceived purpose of committing suicide, could not be made the basis of recovery when the suicide was committed. The fraudulent purpose would vitiate the contract.

In Missouri, by statute, insurance companies are prevented from making any contract of insurance which will enable suicide from being pleaded as a defense, "unless it shall be shown to the satisfaction of the court or jury trying the case that the insured contemplated suicide at the time he made his application for the policy."

In Ætna Ins. Co. *vs.* Florida, 32 U. S. App., 753, 69 Fed. Rep., 69, Circuit Judge Thayer, referring to this clause, said it—

> "Was not intended to create or afford to life insurance companies a new defense to such actions, but rather to state an exception to the general rule first enumerated. The legislature was doubtless aware of the fact that at common law, without the aid of any statute, it was competent for an insurance company to show by way of defense to an action in a life insurance policy that the assured had taken out the policy with the preconceived intent of thereafter committing suicide, and that such purpose was subsequently executed. It doubtless intended by the concluding clause to preserve the right to still make that defense. (Citing Smith *vs.* Society, 123 N. Y., 85.) This seems to us to have been the manifest purpose of the concluding paragraph of the statute. It recognizes the existence of a defense well known to the law, to wit, the defense of fraud, and authorizes the insurer to make that defense."

This case is also valuable as defining that the contemplation of suicide within the meaning of the statute and

of the common-law rule as to fraud was a defined intent or purpose; that it would not be enough to show that the insured may have considered the question of suicide, or thought upon it. While to consider attentively or to meditate may be the primary meaning of "contemplate"—"to intend," a secondary meaning was the sense in which it was used in this statute.

While the rule stated by Mr. Justice Hunt has not come before this court for further consideration until now, we submit that it is founded on a correct apprehension of the nature of the contract of life insurance; with the practice of insurance offices; and with the rule adopted in a large number of cases which, while they may not raise the precise question before the court, are not distinguishable in principle.

In Darrow *vs.* Family Fund Society, 116 N. Y., 542, the court said:—

> "It was alleged as a defense that the defendant offered to prove on the trial that the member, Darrow, died from the effects of poison taken by him, and which was administered by him with the intent to take his own life. The evidence was excluded, and exception taken. The fact that he committed suicide was no defense unless it came within some condition of the contract of insurance relieving the defendant from liability in such case."

The court then proceeded to consider whether the suicide came within a clause that the policy—

"Should be void if the member shall die in violation of or attempting to violate any criminal law of the United States or of any State or county in which the member herein named may be," saying:—

> "It must for the purpose of the question here be assumed that Darrow had the purpose of taking his own life, and that he fully accomplished such purpose. The result of his act, influenced by such intent, then was his death. By the act of taking his own life he violated no criminal law, unless the attempt to do it may be distinguished from the act accomplished. An act is characterized by the purpose, when ascertained, of the party doing it or by its result. If the act fails to accomplish its purpose it constitutes an attempt, but if the result of it is the con-

summation of the purpose, the act is not commonly designated as an attempt. The common acceptation of terms used, and which do not necessarily have a technical meaning, is entitled to some consideration in the construction of contracts where the intention of the parties is sought for, as it must be in the language employed. For the purpose of upholdng the contract of insurance its provisions will be strictly construed as against the insurer.

"The conclusion is that the death of the member by suicide did not, within the meaning of any provision of the policy, render it for that reason void, and therefore the exclusion of the evidence upon that subject was not error. No other question requires the expression of consideration."

See also following the above case Meachem *vs.* The Assn., 120 N. Y., page 237.

In Kerr *vs.* Minnesota Mutual Benefit Association, 39 Minn., 174, the policy of insurance provided:—

"If the assured shall die in or in consequence of the violation of any criminal law of any country, State, or Territory in which the assured may be, this certificate shall be null and void."

It was held that suicide committed by an alleged fugitive from justice to avoid arrest and trial for a crime committed by the assured, is not to be considered as the proximate result of the alleged crime, and that his death by suicide is not within the proper meaning of the policy to be considered as the violation of law therein referred to. The court further said:—

"In the law of insurance suicide is not, as a rule, recognized as a ground of exemption from liability, or for the forfeiture of a policy issued for the benefit of a third person, unless it is expressly so provided in the policy."

In Mills *vs.* Rebstock, 29 Minn., 380, the constitution and by-laws of a mutual benefit association organized to secure the benefit of life insurance to the heirs of deceased members on the death-assessment plan, and which issues no policies, stand in the place of a policy, and where such constitution and by-laws contain no provision qualifying the right of recovery in case of suicide, the heirs of a member are entitled to recover the amount stipulated, irrespective of the mode of his death.

In Northwest Association *vs.* Wanner, 24 Ill. App. Court Rep., 357, a policy having been issued by a mutual association without a suicide clause, it was held that it was not competent for the association, by a subsequent by-law, to exempt itself from liability in case of suicide.

In Cooke on Life Insurance, section 41, the effect of self destruction, when not provided against in the policy, is stated as follows:—

> "If the performance by the insurer is, in general terms, conditioned on the death of the insured, there seems no valid reason why death by committing suicide should not be included, and such is the general doctrine. *A fortiori* is this true of self destruction by an insane person, but this rule is subject to the reasonable limitation that one effecting insurance with intent to commit suicide, the committing of suicide in pursuance of such intent is guilty of fraud that will avoid the contract, even though it contain no provision as to suicide. Contracts of insurance have very commonly contained provisions excepting from the risk death by suicide."

In passing upon this question at the trial of the present case in the court below, Judge Butler said to the jury:—

> "I regret that I must pass on this question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. *It is on these chances that the premium is calculated and based and the contract is founded.*"

There was no evidence in the cause which enabled the court to make this statement of fact, and in the absence of direct evidence as to the manner in which the mortality tables are prepared it might be urged that there is reversible error in such a statement of a supposed fact; but if it be assumed that a court is entitled to refer to the manner of preparing the mortality tables as a matter of general knowledge without direct evidence, then the court was mistaken in its statement, because, in fact, it is a matter of general knowledge that the mortality tables upon which the premium is calculated and based and the

contract is founded include all deaths, including those of suicides, and this fact has been judicially noticed.

In Estabrooke *vs.* Union Mutual L. I. Co., 54 Maine, 224, Appleton, C. J., said:—

> "There is, indeed, no reason why it [the policy] should not do so [cover this as well as every other risk], for the general tables of mortality, which form the basis of the calculations upon which the policy is founded, include this [suicide] as well as every other cause of death; so that the particular risk is actually insured against."

And Bliss on Life Insurance, section 239, in commenting upon the insufficiency of the usual express clauses exempting the company from liability in cases of suicide, says:—

> "If the companies continue to think it important to except from losses insured against any kind of self destruction, we believe they must make some such change in the terms of the exception inserted in their policies. The question of the propriety of any such exception is not a legal one. [The change suggested in the preceding section is clause giving to the insured in case of suicide the net reserve value.] It may be observed, however, that the argument sometimes used, that the mathematical calculations of the life insurance companies upon which their premiums are reckoned are based upon the ascertained deaths from all causes, and that therefore liability to death by self destruction is included mathematically in their premiums, would apply with equal force against the exception as to death by the hands of justice, in a duel, or in violation of law."

In Breasted *vs.* Farmers' Loan & Trust Company, 4 Hill (N. Y.), 73, the court said:—

> "It must occur to every prudent man seeking to make provision for his family by an insurance on his life, that insanity is one of the diseases that may terminate his being. It is said the defendants did not insure the continuance of the intestate's reason, nor did they in terms insure him against smallpox or scarlet fever; but had he died of either disease there is no doubt that the defendants would have been liable. They insure the continuance of life. What difference can it make to them or to him whether it is terminated by the ordinary course of disease in his bed or in a fit of delirium he ends it himself? In each case the death is occasioned by means in the meaning of the policy."

We submit that these quotations show that the reason given without evidence by the learned court upon supposed conditions of fact was erroneous, and the second reason, which was one of legal analogy, stands upon no surer foundation.

The second reason given in the charge of Judge Butler why there could be no recovery in case of suicide, was:—

> "It cannot be doubted that if one having a policy on his buildings insuring against fire should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insured seems to me to be as clear in the latter case as in either of the others."

We do not question that in the cases mentioned, of arson and murder, no insurance could be recovered. But these cases, although assumed to be analogous, are not necessarily so. The true question always is, was the act committed with a felonious intent? If it was, the doer of the act ought to reap no benefit from it. If it was not, the doer is not necessarily excluded from the benefit. The felonious intent is the test. Let this be considered. Let it be conceded that a creditor who holds a policy on the life of his debtor cannot recover if he feloniously kills the insured. But what shall be said of a case in which the creditor is the sheriff of the county and the debtor is a convicted murderer sentenced to be hanged? Is the holder of the policy to forfeit his right thereunder because he discharges his official duty and does execution on the criminal? Or suppose the debtor is an alien enemy, and the creditor takes his life in battle and in the discharge of his duty as a soldier; is the insurance company, especially if it be a corporation holding a charter under the creditor's government, justified in refusing to fulfill its contract because the beneficiary under the policy did his duty to the State? Again, suppose the holder of a fire policy to be an artilleryman serving a gun whose fire was directed upon the insured building then in the oc-

cupation of the enemy; and let us further suppose that the policy was for fifty per cent. only of the value of the house; must the owner of the policy lose not only the uninsured half of the value but also that half which was covered by the policy because he did his duty? It would be a good argument to present to the courts of the enemy; but (it is submitted) it should not be held good when urged upon the tribunals of the common county of the insurer and insured. The view expressed, therefore, by the trial judge in this case was too broad. It unwarrantably assumed that all killing must be murder and that all destruction of property by fire is, of necessity, arson; ignoring the cases in which the act of killing and the act of setting on fire may not only be not reprehensible but may be excusable or even praiseworthy. This court has been more careful in the expression of its views. "It would be a reproach to the jurisprudence of the country," said Mr. Justice Field, "if one could recover insurance money payable on the death of a party whose life he had *feloniously* taken."

Armstrong *vs.* Mutual Life Insurance Company, 117 U. S., 591.

We think, moreover, that the court below, in the hurry of the trial, failed to distinguish the present case from that of the creditor who *murders* his debtor upon whose life an insurance is held, for another obvious reason. Confusion often arises in life insurance matters from the paucity of language. The party whose life is insured is spoken of as the "insured" or "assured;" so also the party who is beneficially interested in the payment of the insurance is spoken of as the "insured." There is no analogy, however, between the relations of the parties.

It would be so contrary to conscience that he who is personally to enjoy the proceeds of a life insurance policy should accelerate the time of such enjoyment by the commission of the high crime of murder, that the law recoils from the idea that the wrongdoer is to enjoy the fruit of his crime. As was said by Mr. Justice Field, in Arm-

strong *vs.* Mutual Life Insurance Company, 117 U. S., 591 (already quoted):—

> "It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had *feloniously* taken. As well might he recover insurance money upon a building that he had *willfully* fired."

But he whose life is insured has no beneficial or enjoyable interest to the proceeds of the life policy. The contract by the insurance company is to pay a certain sum upon the termination of the life insured. The payment, by the terms of the policy, may be directed by any one who is interested in the continuance of the life, either relative or creditor, or it may be payable to executors and administrators, to be by them applied for the benefit of creditors and relatives as their interest may be established by law.

Hence it has become the practice of the English companies to provide expressly that if the policy be made payable or be assigned to a creditor or relative, the suicide of the one whose life is insured shall not relieve the company from liability to make payment, and the same conditions expressly protects the payment of the policy in favor of any one who has by charge or lien acquired an interest therein.

In several American cases it has been held that in an action by a beneficiary named in a life policy containing no suicide clause, the suicide of the party upon whose life the policy issued is no defense.

In the absence of a statute declaring what is public policy, or of a condition in a contract limiting its operation, it is not the function of a court to declare contracts void because of supposed public policy.

The proper limitations upon judicial power are very clearly stated in the recent opinion in Carpenter's Estate, 170 Penna. St., 203, where the question was whether a son convicted of murdering his father was entitled to share in the distribution of the estate under the intestate laws. The court held that he was.

Mr. Justice Green in the opinion said:—

"The penalty of murder in the first degree in Pennsylvania is death by hanging. No confiscation of lands or goods, and no deprivation of the inheritable quality of blood, constitutes any part of the penalty of this offense. The Declaration of Rights, article 1, section 18, of the Constitution of the State, declares that 'No person shall be attainted of treason or felony by the legislature,' and by section 19 it is provided that 'No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth. The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.' These are provisions of the organic laws which may not be transcended by any legislation. Inasmuch as the prescribed penalty for murder is death by hanging (Crimes Act of 1860, section 75, Bright. Purd., 511, pl. 232), without any forfeiture of estate or corruption of blood, it cannot be said that any such consequence can be lawfully attributed to any such offense. In other words, our Constitution positively prohibits any attaint of treason or felony by the legislature and any corruption of blood by reason of attainder, or any forfeiture of estate, except during the life of the offender. * * * It is argued that the son who murders his own father has forfeited all right to his father's estate because it is his own wrongful act that has terminated his father's life. The logical foundation of this argument is, and must be, that it is punishment for the son's wrongful act. But the law must fix punishments, the courts can only enforce them. In this State no such punishment as this is fixed by any law, and therefore the courts cannot impose it. It is argued, however, that it would be contrary to public policy to allow a parricide to inherit his father's estate. Where is the authority for such a contention? How can such a proposition be maintained when there is a positive statute directing a precisely opposite conclusion? In other words, when the imperative language of a statute prescribes that upon the death of a person his estate shall vest in his children in the absence of a will, how can any doctrine or principle or other thing called public policy take away the estate of a child and give it to some other person? The intestate law casts the estate upon certain designated persons, and this is absolute and peremptory, and the estate cannot be diverted from those persons and given to other persons without violating the statute. There can be no public policy which contravenes the positive language of a statute."

In Cleaver *vs.* Mutual Reserve Fund Life Asso., 1 Queen's Bench, 147, the English Court of Appeals held:—

> "The executors of a person who has effected an insurance on his life for the benefit of his wife can maintain an action on the policy, notwithstanding the fact that the death of the insured was caused by the felonious act of the wife. The trust created by the policy in favor of the wife, under the Married Women's Property Act, 1882, section 11, having become incapable of being performed by reason of her crime, the insurance money forms part of the estate of the insured, and as between his legal representatives and the insurers no question of public policy arises to afford a defense to the action."

Fitch *vs.* American Popular Ins. Co., 59 N. Y., 557, was a suit by a widow, to whom the policy by its terms was made payable.

Rapallo, J., said:—

> "These policies are provisions made usually by persons of slender means for the benefit of their families in case of death. They sometimes devote their small savings for many successive years to paying the premiums. * * *
>
> "The refusals to charge as requested are covered by the remarks already made, and this disposes of all the material exceptions except the rejection of evidence that Fitch, the deceased, committed suicide.
>
> "The policy contained no stipulation that it would be void in case of the death of the insured by suicide. It was not taken out for the benefit of Fitch, but of his wife and children, although they were bound by his representations, and any fraud he may have committed in taking out the policy, the policy having been secured through his agency, yet they were not bound by any acts or declarations done or made by him after the issue of the policy unless such acts were done in violation of some condition of the policy. We have examined the various grounds upon which the defendant claims that this evidence was admissible, but are of opinion that they are not sufficient."

Patrick *vs.* Excelsior Life Insurance Company, 67 Barb., 202.

This was an action on a life policy issued for the benefit of the insured's wife. The policy did not contain any clause making it void in case of the suicide of the insured.

The court said:—

> "The case of Fitch *vs.* The Insurance Company, 59 N. Y., 557, has settled the doctrine that in the case of a policy for the benefit of the wife, the suicide of the insured is not a defense where there is no stipulation to that effect in the policy. This doctrine makes the question of sanity or insanity immaterial in this case, and disposes of most of the points raised by the defendants, for I do not think that the expression 'in known violation of the law of any State,' can be construed to include suicide, although suicide has been called a felony."

That no public policy prevents recovery on a policy of insurance the proceeds of which are to be used for the payment of the debts of the insured, is shown by Moore *vs.* Woolsey, 4 Ellis & B., 243, and Jones *vs.* Consolidated Investment As. Co., 26 Beav., 256.

The only difference between the English cases and the present case is that the assured there by deed had charged the proceeds of the policy with the payment of debts. In Pennsylvania, by virtue of the statute, the proceeds pass into the hands of the executor or administrator charged with the payment of the debts.

There can be no policy of law which renders the contract of insurance void in the one case which does not apply equally to the other.

In Jones *vs.* Consolidated Investment Ass. Co., 26 Beav., 256, before Romilly, M. R.:—

> "One of the conditions of a life policy was that it should be void if the assured died by his own hand, except it should have been assigned to other parties for valuable consideration six months before his death. *Held*, that a letter to A. B., charging it with a floating balance due to him and made three years previous to the death of the assured by his own hand, was within the exception."

In White *vs.* British Empire Life Ass. Co., L. R., 7 Eq., 194, an assurance company advanced money to W. on a mortgage of real security, and on his effecting a policy on his life in their office for the amount of the loan, which was deposited with the company as collateral security. The policy contained a condition that if the assured died by his own hands, by the hands of justice, or by dueling, the policy should be void, except to the extent of any

bona fide interest therein which at the time of such death should be vested in any other person or persons for a sufficient pecuniary or other consideration. W. committed suicide under temporary insanity while the policy was in the hands of the company. *Held*, that the company and the assured stood in the same position as if the policy had been mortgaged to any third person; that the company came within the exception in the condition, and therefore that the policy was valid to the extent of the mortgage debt due to them at the death of the insured. Sir R. Malins, V. C.:—

"It is agreed on both sides, that in the events which have happened, if Mr. White had retained the policy in his own hands it would have been void; and that if it had been deposited for value in the hands of any third person it would have been valid to the extent of any *bona fide* interest in such third person; and the question is, whether the assurance company, having advanced money to the assured and taken a deposit of the policy as a collateral security, the company must be considered as other persons who have acquired an interest in the policy?

"In the case of Solicitors' and General Life Assurance Company *vs.* Lamb, there was a clause very similar to the one upon which the question arises in this case, and the question as to the nature and effect of such a clause was raised both before Vice-Chancellor Wood and the Lords Justices; and Vice-Chancellor Wood laid down the rule, which I think is the true rule, that such a condition is for the benefit, not of the office, but of the assured. The Vice-Chancellor said: 'The object of the condition is to increase the value of the policy to the holder, *i. e.*, in the first place, to the assured. And if that be so, I do not see how I can hold that in the absence of fraud the estate of the assured is to be deprived of the benefit intended to be given to him by the exception merely because the mortgagee happens to be fully secured.' The same rule was adopted by the Lords Justices, who held that the condition was intended for the benefit of the assured in order to render the policy an available security.

"This condition, then, being for the benefit of the assured, and it being admitted that if he had deposited it for value with an indifferent person it would have been valid to the amount of such interest, why should the assured be in a less favorable position because the assurance company have themselves advanced him money and taken it as a security? If the company desired that under these circumstances the assured should be in a less favorable position than if he had borrowed from a third person,

they might have stipulated that the proviso should have no operation while they were mortgagees of the policy. I have heard no reason suggested why the assured should stand in a less favorable position than if he had borrowed from an indifferent person.

"But the company made no such provision, and I am of opinion that the assurance company contracted in such manner as to place them and the assured in the position of mortgagor and mortgagees; that the condition and the exception contained in it were in force when the assured died, and that the moment they agreed to take the deposit they came within the condition that the policy, to the extent of their interest, should be binding.

"The policy, therefore, being still in force to the amount of the debt due to the assurance company, that debt must be considered as satisfied, and the securities held by the company must be re-assigned. The assurance company must pay the costs of the suit."

This is a distinct adjudication that the fact that the estate of a suicide may in substance obtain the benefit of a life insurance does not violate any rule of public policy. In any case where it is sought, as in this case, to relieve a party from the performance of a contract upon the idea that public policy forbids such performance, the substance, not the form, of the transaction is to be considered. The cases cited show that there is no public policy recognized by the courts of England or America which prevents relatives and creditors of a suicide, and even the estate of a suicide, from receiving the proceeds or benefit of a life policy which becomes, by its terms, payable on the death of a man who in fact dies by his own hand.

If public policy does not forbid the payment of the policy when, by the terms of the policy, payment is made directly by the insurance company to the creditor or relative, public policy cannot forbid it when the payment is made in effect for the benefit of creditors and relatives, to be distributed among them by an executor or administrator.

The general practice of the defendant company also shows that it does not regard suicide by itself a reason for avoiding the policy upon grounds of public policy.

When the suicide clause is inserted in its policies, it is now usually in terms limited to a suicide occurring within two years after the issue of the policy.

This is recognized in Kelley *vs.* Mutual Life Ins. Co., 75 Fed. Rep., 637, where Woolson, J., said:—

> "One of the provisions of the policies in suit is that suicide after two years from date of policy would not be a valid ground for contest, and when the insured affixed his signature to the several applications for the policies in suit herein he could not have misunderstood that the statements therein, 'I also warrant and agree that I will not die by my own hand, whether sane or insane, during said period of two years,' were introduced for the purpose of excepting from the operation of the policy any intended self destruction within such two years. He was thereby informed, and each holder of said policies (containing therein the application with this warranty in full) was informed that 'if the insured purposely destroyed his own life within said two years, the company would be relieved from liability under said policies.'"

If a policy with such a clause is enforceable in case of suicide occurring two years and one day after its issue, a policy with no suicide clause is enforceable at all times, unless the company be able to defend by showing in fact that the policy was taken out with the fraudulent purpose of committing suicide.

The same principle was laid down in Jackson *vs.* Foster, 5 Jurist, 547, and the discussion in the case was over the purely technical question whether assignees in bankruptcy were within the expressed condition in the policy. A policy contained a condition that it should be void if the life insured died by suicide, but if any third party had acquired a *bona fide* interest therein by assignment or by legal or equitable lien for a valuable consideration or a security for money, the insurance should to the extent of such interest be valid. *Held*, that assignees in bankruptcy were not within the language of the condition.

In the Exchequer Chamber, Cockburn, C. J., said:—

> "The insurance company may be taken to have granted the insurance upon a calculation of the average duration of human life, and for that reason to have excluded from the benefit of the

policy the case of death by suicide. But for this exclusion a man might insure his life with an intention of putting an end to it by his own hands. But on the other hand, it would be injurious to the interests of insurance companies if policies could be avoided whenever the assured committed suicide, even when the interest in the policy had passed to a third party, inasmuch as one of the chief advantages of a life policy, the power of making use of it as a negotiable instrument, would be destroyed. This company seems to have made a sort of compromise, and stipulated that the policy should be avoided by the suicide of the assured, except where a *bona fide* interest in the policy had passed from the assured to a third party, either by way of assignment or by way of legal or equitable lien, or as a security for money."

It would tend to show that there can be no general policy of the law which would compel the insertion into life insurance contracts of a clause avoiding them upon the ground of suicide, when the statutes of certain States provide that even if the clause be written in, the fact of suicide is no defense unless the party contemplated suicide in applying for the policy. Such is the Missouri statute, enforced in L. I. Co. *vs.* Berry, 50 Fed., 511, and Western Ins. Co., 5 Florida, *supra.*

The laws as well as public opinion regard a suicide as an unfortunate rather than a felon.

Article I., section 19, of the Constitution of Pennsylvania, provides:—

> "The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death."

This humane provision is found in the Constitution of 1794 and every Constitution since adopted.

It would also appear that these formal differences, as to who effected the insurance and in whose favor the policy was made payable, were immaterial and not of the substance of the transaction. In the opinion of Mr. Justice Hunt, in Terry *vs.* Ins. Co., 15 Wall, already cited, he says:—

> "In the present instance the contract of insurance was made between Mrs. Terry and the company, the insured not being in form a party to the contract. Such contracts are frequently made by the insured himself, the policy stating that it is for the

> benefit of the wife, and that in the event of death the money is to be paid to her. We see no difference in the cases. In each it is the case of a contract, and is to be so rendered as to give effect to the intention of the parties."

And a like opinion of the immateriality of the question whether the suit was by executor, administrator, or assignee, was entertained by Judge Trunkey in his charge to the jury in Bank of Oil City *vs.* Guardian Mutual Ins. Co., Common Pleas Venango County, Penna., 6 Leg. Gaz., 348.

The action was by an assignee upon a policy in terms void if the insured died by his own hand. In course of charge the judge said:—

> "One guilty of suicide who has his life insured commits a fraud upon the company, and there can be no recovery on the policy, whether there be such a condition expressed therein or not. This fraud would defeat recovery by his assignee or by the representative of his estate."

In so far as the charge of Judge Trunkey is against us, it is mere dictum and also contrary to all the authorities, English and American. The case is cited for the purpose of showing that to the mind of Judge Trunkey there was no substantial distinction between the rights of a relative or creditor assignee and those of an executor or administrator.

These cases render it clear that the reason suggested by the House of Lords in Fauntleroy's case why the policy could not be paid in that case, have no application to the payment of a policy upon death by suicide.

In Fauntleroy's case, Amicable Society *vs.* Bolland, 4 Bligh, N. S., 240, assignees in bankruptcy sought to recover on a policy on the life of one executed for felony—forgery on the Bank of England. The Lord Chancellor held that no recovery could be had, saying:—

> "It appears to me that this resolves itself into a very plain and simple consideration. Suppose that in the policy itself this risk had been insured against; that is, that the party insuring had agreed to pay a sum of money year by year, upon condition that in the event of his committing a capital felony, and being tried,

convicted, and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy? Would not such a contract, if available, take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections? Now, if a policy of that description, with such a form of condition inserted in it in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, we can sustain such a claim? Can we, in considering this policy, give to it the effect of that insertion which, if expressed in terms, would have rendered the policy, as far as that condition went, at least altogether void?"

While a policy drawn in express terms to insure only against the case of suicide might be objectionable to public policy, the cases cited show that where the contract of insurance is entered into in good faith to cover the contingencies of life and death, the fact that he whose life is insured dies by his own hand does not, upon any ground of public policy, stand in the way of the payment of the policy.

If the proposition of law affirmed by the court below is sound, no contract could be made which would permit payment in case of suicide where the policy is for the benefit of the insured. And yet experience shows that controlling circumstances render suicide one of the hazards of life against which an applicant for insurance should protect himself. For just as homicide in the eye of the law is divided into three classes, namely, justifiable, excusable, and felonious, so may suicide be divided, to wit, justifiable, as in the case of a soldier who goes to certain death upon a forlorn hope; excusable, where the insured is insane; and felonious, when the acts of insurance and suicide are with intent to defraud the insurer. Other illustrations of these various classes may be readily imagined. Certainly public policy would not prevent an insurance against the first two risks, and the third renders the contract void for sounder reasons than the argument of public policy.

Whether, therefore, in any given case the suicide is justifiable, excusable, or felonious is a question of fact. Is there any public policy which could forbid a contract which excludes the question of fact? Certainly a contract would be sustained which provided that suicide should not prevent recovery on the policy, it being agreed therein that the mere fact of suicide should be deemed conclusive proof of insanity, thus bringing all suicide within the class excusable.

It may be also worth while to bring to the attention of the court in this connection the late Mr. Arthur Biddle's excellent statement of the distinction between life and other policies.

Biddle on Insurance, section 4:—

> "Insurance in respect of life, which is substantially the purchase by the insured from the insurer of a reversionary interest for a present sum of money, may be defined to be an agreement by the insurer to pay to the insured or his nominee a specified sum of money, either on the death of a designated life or at the end of a certain period, provided the death does not occur before, in consideration of the present payment of a fixed amount, or of an annuity till the death occurs or the period of insurance is ended. And it may be said theoretically to be a contrivance for accumulating for the benefit of the insured by the payment of an annuity or a present sum, the accumulation being paid to the insured or his appointee at the time fixed or contingent upon the event designated and the amount of the annuity or present sum being calculated on the probable duration of the insured's life or period of insurance. Life insurance is not in any sense a contract of indemnity, though in the English case of Godsall *vs.* Boldero it was so held ; but that case proceeding on false analogies, after having been almost universally condemned, and its principles not even taken advantage of by the principal life insurance companies of England, was finally reversed in Dalby *vs.* India & London L. Assur. Co. As the contract is not one of indemnity, no interest was necessary, by the common law, to its validity, and wagering contracts of life insurance were clearly valid. But the statute of 14 Geo. III., chapter 48, necessitated in England the existence of an insurable interest in the life, at least at the formation of the contract, and the statute of 29 and 30 Vict., chapter 42 (1866), in Ireland. In most of the courts in the United States a somewhat peculiar

rule prevails. It is generally held that life insurance, though not a contract of indemnity, is still not absolutely a wager, but must have some interest to support it, though the interest need not exist both at the inception and the death, but in Rhode Island and New Jersey the rule of the English common law is maintained. In England the interest has been held to mean a pecuniary interest, while in the United States it has been considered that the interest need not be pecuniary, though what interest is necessary is somewhat uncertain.

"NOTE.—The eminent Baron Parke defined it as 'a mere contract to pay a certain sum of money on the death of a person, in consideration of the due payment of a certain annuity for his life, the amount of the annuity being calculated, in the first instance, according to the probable duration of the life; and, when once fixed, it is constant and invariable.' Dalby *vs.* India & Lond. L. Assur. Co., 15 C. B., 365, which was approved in Elliott's Ap., 50 Pa. St., 75. Parke, in his book on insurance, defines life insurance to be a contract 'by which the underwriter, for a certain sum, proportioned to the age, health, profession, and other circumstances of that person whose life is the object of insurance, engages that the person shall not die within the time limited in the policy; or, if he do, that he will pay a sum of money to him in whose favor the policy was granted' (in chapter XXII., beginning); Bunyon, as 'a contract in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain periodical payments by another.' Bunyon on Insurance, 1. In Comm. *vs.* Wetherbee, 105 Mass., 149, 160, it was defined as 'an agreement by which one party, for a consideration (which is usually paid in money, either in one sum or at different times during the continuance of the contract of the risk), promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest.' In Scot. Widows' Fund *vs.* Buist, 3 C. S. C. (4 ser), 1078, page 1081, Rt. Hon. John Inglis defined it 'as a mutual contract, by which the insurance company or insurance society, on the one hand, come under an obligation to pay a certain sum of money upon the death of the assured, and the assured, on the other hand, becomes bound to pay certain sums, either annually or otherwise, in the name of premiums, and these obligations are counterparts of one another.' "

Biddle on Insurance, section 830:—

"It may be that a contract of insurance would be avoided where the insured commits intentional self destruction or sui-

cide, and while it will be difficult to find any case deciding that it does, there are undoubtedly *dicta* to that effect." Citing—

Moore *vs.* Woolsey, 4 E. & B., 243;
Horn *vs.* Anglo-Aus. Ins. Co., 30 L. J. Ch., 511;
Sup. Com. *vs.* Ainsworth, 71 Ala., 436;
Jarvis *vs.* Ins. Co., 5 Ins. L. J., 507.

"It has indeed been held that the suicide of the insured will not avoid a policy in the absence of a clause against suicide taken out for the benefit of some one else, as a wife, child, &c. Where, however, a policy is taken with the fraudulent intent to take one's own life, a suicide will obviously avoid." Citing—

Fitch *vs.* Ins. Co., 59 N. Y., 557;
Patrick *vs.* Ins. Co., 67 Barb., 202;
Mills *vs.* Rebstick, 29 Minn., 380;
Kerr *vs.* Mut. Ben. Asso., 39 Minn., 174;
Smith *vs.* Bene. Soc., 51 Hun., 575.

Biddle on Insurance, 837:—

"It has been held that a life policy is not avoided by the fact that the insured suffered death in expiation of a criminal offense unless there is a clause to that effect; but to avoid the obligation to pay on the policy, the act of the insured which produced the event must be done fraudulently for the very purpose of bringing that event about." Citing—

Bolland *vs.* Disney, 3 Rus., 351.

Section 837:—

"Many policies now stipulate for an exception of liability in the event of the insured's dying in, or in consequence of, the violation of the laws. * * * If suicide is not made a crime, it has been held that the insured's suicide does not avoid the policy under the above clause." Citing—

Kerr *vs.* Mut. Benefit Asso'n, 39 Minn., 174;
Meacham *vs.* Mut. Benefit Ass., 120 N. Y., 237;
Darrow *vs.* Family Fund Soc., 116 N. Y., 537.

Other writers have taken the same view of the question.

Thus in Bunyon on Insurance:—

"The contract commonly called life insurance, when properly considered, is a mere contract to pay a certain sum of money on the death of a person, in consideration of the due payment of a certain annuity for his life, the amount of the annuity being contributed in the first instance according to the probable duration

of the life, and when once fixed it is constant and invariable. The stipulated amount of annuity is to be uniformly paid on one side and the sum to be paid in the event of death is always (except when bonuses have been given by prosperous offices) the same on the other. This species of insurance in no way resembles a contract of indemnity."

Baron Parke in Dalby *vs.* India & London Life Ass. Co., 15 C. B., 365.

13 American and English Enc. of Law., 642, title, "Life Insurance," it is said:—

"(5.) SUICIDE.—A provision is usually inserted in life insurance policies exempting the company from liability in case the insured shall commit suicide. It is of varying phraseology, as that the company shall not be liable in case the insured shall 'die by his own act' or 'by his own hand' or 'by suicide.' In the absence of this provision the suicide of the insured will not affect the validity of the policy." Citing—

Fitch *vs.* American Popular Ins. Co., 59 N. Y., 557;
Patrick *vs.* Excelsior Life Ins. Co., 4 Hun. (N. Y.), 263;
Kerr *vs.* Minnesota M. B. Asso., 39 Minn., 174.

"At any rate this is the weight of authority, though the contrary has been decided in Pennsylvania." Citing—

Hartman *vs.* Ins. Co., 21 Pa. St., 466.

"The question most discussed under this provision has been whether it is applicable to the case of a party taking his own life while insane, and upon this the courts have not reached the same conclusion; certain it is, that where there is no provision of this character, the policy is not vacated by the suicide of the insured when in a state of insanity." Citing—

Horn *vs.* Anglo-Aus. Ins. Co., 7 Jur. N. S., 673.

"But when the provision under consideration is inserted without any further provision as to whether it shall apply in case the insured shall commit suicide when insane, the question becomes involved in doubt."

Bliss, section 224 (edition 1872):—

"Upon no question in life insurance is there such an irreconcilable conflict of opinion as upon the question of the effect upon the policy of self destruction by the person whose life is insured.

* * * * * * * * *

"While in England cases have arisen in which there was no provision in the policy upon the subject (Horn *vs.* Anglo-Aus. Ins. Co., 7 Jur. N. S., 673), in all the cases in this country and

in the leading ones in England, there has been an express provision in the policy."

Bacon on Benefit Societies and Life Insurance, edition of 1894, section 330:—

"If a sane man deliberately takes his own life it has been contended that it is such fraud upon the insurers as to preclude recovery upon the contract. In practice, however, such cases seldom occur, and it has been held that unless it is so stipulated in the policies suicide is no defense."

Horn *vs.* Anglo-Australian Company, 30 Law Journal, chapter 511, section 337:—

"Where the policy or the constitution and laws of the society or order contain no provision qualifying the right to recover if the insured member takes his own life, suicide is not a defense."

We will also refer the court to certain extracts from the opinions of the court in several leading cases upon policies containing the clauses making the policy void in case of suicide. While the constructions placed by the courts upon that clause have been very diverse, there is a remarkable unanimity in these opinions in stating the reason of the rule in a manner which strongly supports the contention of the plaintiff in error.

In Eastabrooke *vs.* Union Mutual L. I. Co., 54 Maine, 224, Appleton, C. J., said:—

"A creditor may insure upon the life of the debtor, or one may insure upon his own life for the benefit of his family. In no event can the person upon whose life the policy is effected be benefited by his own death.

* * * * * * * * *

"That a jury would be likely to regard suicide as proof of insanity does not affect the conclusion. If suicide is to be regarded as evidentiary of insanity, as it unquestionably is in most cases, then they generally arrive at correct results.

* * * * * * * * *

"Nor does the case of suicide by one insane fall within the danger to guard against the occurrence of which this condition was inserted. * * * The person whose life is insured never receives money payable after his death. Suicide for the benefit

of others is rare, exceptional, and Quixotic. The love of life, the strongest sentiment of our nature, affords reasonable security against a danger so remotely probable."

In Borradaile *vs.* Hunter, 5 M. & G., 639, Maule, J., in delivering the opinion of the majority upon the effect of the clause "die by his own hands," holding that by the proviso the policy was avoided in all cases of self destruction, even though the insured was insane, said:—

"A policy by which the sum insured is payable on the death of the assured, in all events gives him a pecuniary interest that he should die immediately rather than at a future time, to the extent of the excess of the value of a present payment over a deferred one, and offers, therefore, a temptation to self destruction to this extent. To protect the insurers against the increase of risk arising out of this temptation is the object for which the condition in question is inserted. It ought, therefore, to be so construed as to include those cases of self destruction in which but for the condition the act might have been committed in order to accelerate the claim on the policy, and to exclude those in which the circumstances, supposing the policy to have been unconditional, would show that the act could not have been committed with the view to pecuniary interest. This principle of construction requires and accounts for the exclusion from the operation of the condition of those cases falling within the general sense of its words to which it is admitted not to apply—such as those of accident and delirium. To apply it to the present case, it appears by the finding of the jury, that the testator voluntarily threw himself into the water intending to destroy his life, but that at the time he did so he was not capable of judging between right and wrong; and as a man who drowns himself voluntarily may do it to found a claim on a policy though he may not think it wrong to do so, or though his mind may be so diseased that he does not know right from wrong, which, as I understand the finding of the jury, was the case with the testator, it seems to me that the object of the condition would not be effected unless it comprehended such a case of self destruction."

In Dean *vs.* American L. I. Co., 4 Allen, 96, in following Borradaile *vs.* Hunter, Bigelow, C. J., said:—

"Although the assured can derive no pecuniary advantage to himself by hastening his own death, he may have a motive to take his own life, and thus to create a claim under the policy in order to confer a benefit on those who, in the event of his death,

will be entitled to receive the sum insured on his life. Unless, then, we can say that such a motive cannot operate on a mind diseased, we cannot restrict the words of the proviso so as to except from the risk covered by the policy only the case of criminal suicide, where the assured was in a condition to be held legally and morally responsible for his acts.

* * * * * * * * *

"This view is entirely consistent with the nature of the contract. It is the ordinary case of an exception of a risk which would otherwise fall within the general terms of the policy."

McKennan, Circ. J., in charging the jury in Nimick *vs.* Mutual Benefit Association (1 Bigelow, 689), said:—

"Giving full force and effect to this rule of interpretation, we are unable to see that there is anything unreasonable or inconsistent with the general purpose which the parties had in view in making and accepting the policy, in a clause which excepts from the risks assumed thereby the death of the assured by his own hand, irrespective of the condition of his mind, as affecting his moral and legal responsibility at the time the act of self destruction was consummated. Every insurer, in assuming a risk, imposes certain restrictions and conditions upon his liability. Nothing is more common than the insertion in policies of insurance of exceptions by which certain kinds or classes of hazards are taken out of the general risk which the insurer is willing to incur. Especially is this true in regard to losses which may arise or grow out of an act of the party insured. Such exceptions are founded on the reasonable assumption that the hazard is increased when the insurance extends to the consequences which may flow from the acts of the person who is to receive a benefit to himself or confer one on others by the happening of a loss within the terms of the policy. Where a party procures a policy on his life, payable to his wife and children, he contemplates that, in the event of his death, the sum insured will inure directly to their benefit. So far as a desire to provide in that contingency for the welfare and comfort of those dependent on him can operate on his mind, he is open to the temptation of a motive to accelerate a claim for a loss under the policy by an act of self destruction. Against an increase of the risk arising from such a cause it is one of the objects of the proviso in question to protect the insurers. Although the insured can derive no pecuniary advantage to himself by hastening his own death, he may have a motive to take his own life, and thus create a claim under the policy in order to confer a benefit on those who, in the event of his death, will be entitled to receive the sum insured on his life."

The position of the plaintiff in error upon this point may be summed up as follows:—

1. The action is at law upon a policy of insurance payable upon the death of an individual named. The death has occurred; and the contingency has, therefore, happened upon which payment, by the terms of the contract, was to be made.

2. The form of policy in common use by this defendant and other companies contains a clause of warranty against suicide within ten years after issue, after which time the policy is incontestable. The omission of such clause from the policy in suit must be assumed, therefore, to have been intentional, and to establish an unconditional contract to pay unless some rule of established public policy prevents the payment of life insurance where the life insured is terminated by suicide.

3. There is no rule of public policy which debars such payment. In England by the form of policy in general use, sanctioned by numerous judicial decisions, payments to relatives and creditors are in terms provided for, notwithstanding such suicide.

In the American decisions all the suits, which have arisen on policies not containing a suicide clause, have been where the policy by its terms was payable to a creditor or relative. In every case the courts have ruled that suicide did not avoid the policy. There is no rational distinction between a suit by a creditor or relative as legal plaintiff and a suit by an executor or administrator as legal plaintiff for the benefit of creditors or relatives having the beneficial interest in the proceeds of the litigation.

4. While the precise question raised on this record has not been decided by this court, the opinion in Terry's case (15 Wallace, 580) expressed a view which is approved by reason and sustained by precedent.

SECOND.—EVEN IF IT BE THE LAW THAT SUICIDE BY A SANE MAN AVOIDS A POLICY UPON HIS LIFE, WHAT IS THE DEFINITION OF INSANITY WHICH RELIEVES FROM THAT CONSEQUENCE?

This question is raised by the seventh and ninth assignments of error.

These assignments were as follows:—

Seventh.—The answer to the plaintiff's fifth point, which point and answer are as follows:—

> " 'If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self destruction will not itself prevent recovery upon the policies.'
>
> "This is affirmed. I will say, however, that we must understand what is meant and intended by the term 'moral character of his act.' It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be misunderstood.
>
> "We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts to himself as well as to others, in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not."

Ninth.—The learned court erred in charging the jury as follows:—

> "I therefore charge you that if he was in a sane condition of mind at the time as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit."

These assignments of error raise the question whether the instructions given by the learned court are in accordance with the law upon this subject as formulated in the decisions of this court.

In discussing this subject we will not go outside of those decisions. The question apart from authority is one upon which much might be said on either side, and the decisions of other tribunals are not in entire harmony. In this case, the rules heretofore formulated by this court, which are much more favorable to the plaintiff than those adopted in certain State courts, control, and the plaintiff in error is entitled to a reversal if the learned judge submitted the cause to the jury with instructions less favorable to the plaintiff than those approved by this court.

In Life Insurance Company *vs.* Terry, 15 Wall, 580, the defendant presented the following points:—

> "*First.*—If the jury believe, from the evidence in the case, that the said George Terry destroyed his own life, and that at the time of self destruction he had sufficient capacity to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case the plaintiff cannot recover on the policy declared on in this case.
>
> "*Second.*—That if the jury believe from the evidence that the self destruction of the said George Terry was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity, which impaired his sense of moral responsibility, and rendered him, to a certain extent, irresponsible for his action."

The court refused to give either of these instructions, and charged as follows:—

> "It being agreed that the deceased destroyed his life by taking poison, it is claimed by the defendant that he 'died by his own hand' within the meaning of the policy, and that they are, therefore, not liable.
>
> "This is so far true that it devolves on the plaintiff to prove such insanity on the part of the decedent, existing at the time he took the poison, as will relieve the act of taking his own life from the effect which, by the general terms used in the policy, self destruction was to have, namely, to avoid the policy.
>
> "It is not every kind or degree of insanity which will so far excuse the party taking his own life as to make the company insuring liable.
>
> "To do this, the act of self destruction must have been the consequence of insanity, and the mind of the decedent must have

been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing.

"If he was impelled to the act by an insane impulse which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to do, the company is liable. On the other hand, there is no presumption of law, *prima facie* or otherwise, that self destruction arises from insanity, and if you believe from the evidence that the decedent, although excited or angry or distressed in mind, formed the determination to take his own life because, in the exercise of his usual reasoning faculties, he preferred death to life, then the company is not liable, because he died by his own hand within the meaning of the policy."

The opinion of Mr. Justice Hunt, affirming the charge of Mr. Justice Miller, given on the circuit, has ever since been taken as the true statement of the rule upon the subject:—

"The request for instructions made by the counsel of the insurance company proceeds upon the theory that if the deceased had sufficient mental capacity to understand the nature and consequences of his act, that is, that he was about to take poison, and that his death would be the result, he was responsible for his conduct, and the defendant is not liable; and the fact that his sense of moral responsibility was impaired by insanity does not affect the case.

"The charge proceeds upon the theory that a higher degree of mental and moral power must exist; that although the deceased had the capacity to know that he was about to take poison, and that his death would be the result, yet, if his reasoning powers were so far gone that he could not exercise them on the act he was about to commit, its nature and effect, or if he was impelled by an insane impulse which his impaired capacity did not enable him to resist, he was not responsible for his conduct, and the defendant is liable.

* * * * * * * * *

"The propositions embodied in the charge before us are in some respects different from each other, but in principle they are identical. They rest upon the same basis—the moral and intellectual incapacity of the deceased. In each case the physical act of self destruction was that of George Terry. In neither was it truly his act. In the one supposition he did it when his reasoning powers were overthrown and he had not power or capacity to exercise them upon the act he was about to do. It was in effect as if his intellect and reason were blotted out or had never

existed. In the other, if he understood and appreciated the effect of his act, an uncontrollable impulse caused by insanity compelled its commission. He had not the power to refrain from its commission, or to resist the impulse. Each of the principles put forth by the judge rests upon the same basis—that the act was not the voluntary, intelligent act of the deceased.

"The causes of insanity are as varied as the varying circumstances of man.

> 'Some for love, some for jealousy,
> For grim religion some, and some for pride,
> Have lost their reason; some for fear of want,
> Want all their lives; and others every day,
> For fear of dying, suffer worse than death.'

"When we speak of the 'mental' condition of a person, we refer to his senses, his perceptions, his consciousness, his ideas. If his mental condition is perfect, his will, his memory, his understanding are perfect, and connected with a healthy bodily organization. If these do not concur, his mental condition is diseased or defective.

"Excessive action of the brain, whereby the faculties become exhausted, a want of proper action whereby the functions become impaired and diminished, the visions, delusions, and mania which accompany irritability, or the weakness which results from an excess of vital functions, indigestion, and sleeplessness, are all the results of a disturbance of the physical system. The intellect and intelligence of man are manifested through the organs of the brain, and from these consciousness, will, memory, judgment, thought, volition, and passion, the functions of the mind, do proceed. Without the brain these cannot exist. With an injured or diseased brain their powers are impaired or diminished.

"We have not before us the particular facts on which the questions of the sanity of Terry were presented. We may assume that proof was given upon which the propositions of the charge were based. We do not know whether he was sleepless, unduly excited, or unnaturally depressed; whether he had abandoned his accustomed habits and pursuits and adopted new and unusual ones; from a quiet, orderly man, had become disorderly, vicious, or licentious; that his fondness for his wife and children changed to dislike and abuse; that jealousy, pride, the fear of want, the fear of death had overtaken him. He may have realized the state supposed by the counsel in arguing Borradaile *vs.* Hunter, viz., that his death might have resulted from an act committed under the influence of delirium, or that in a paroxysm of fever he might have precipitated himself from a window, or having been bled, he might have torn away the bandages. Whether he

swallowed poison or did the other insane acts might result from the same condition of body and mind."

* * * * * * * * *

"That form of insanity called impulsive insanity, by which the person is irresistibly impelled to the commission of an act, is recognized by writers on this subject. It is sometimes accompanied by delusions, and sometimes exists without them. The insanity may be patent in many ways, or it may be concealed. We speak of the impulses of persons of unsound mind. They are manifested in every form—breaking of windows, destruction of furniture, tearing of clothes, firing of houses, assaults, murders, and suicides. The cases are to be carefully distinguished from those where persons in the possession of their reasoning faculties are impelled by passion merely, in the same direction.

"We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

In Rodell *vs.* The Insurance Company, 95 U. S., 232, the suit was upon a policy dated June 25th, 1873. The insured died December 5th, 1873, from the effects of poison administered by his own hand. Mr. Justice Bradley, in delivering the opinion of the court, said:—

"The following request, and another of substantially the same purport, were refused, namely, that the plaintiff could not recover if the assured knew that the act which he committed would result in death, and deliberately did it for that purpose. An additional request was made to charge that a certain letter, written evidently under great excitement by Rodell to his wife on the day of his death, apprising her of his intention to destroy himself, and his reasons for so doing, based upon his pecuniary troubles and anticipated exposures, bore evidence of coolness and deliberation, and of itself afforded presumptive evidence of sanity at the time when it was written. This request was also refused."

* * * * * * * * *

Mr. Justice Bradley then quoted at length from the charge of the court below, which affirmed verbally the instructions previously approved in the Terry case, and then proceeded:—

> "This charge is in the very words of the charge sanctioned and approved by this court in the case of Life Insurance Company *vs.* Terry, 15 Wall, 580, including an explanatory opinion of the court in that case. We see no reason to modify the views expressed by us on that occasion. We think, therefore, that there was no error in the charge as given. It follows that the judge properly refused the request to charge that the plaintiff could not recover if the insured knew that the act which he committed would result in death, and deliberately did it for that purpose. Such knowledge and deliberation are entirely consistent with his being, in the language of the charge, 'impelled by an insane impulse which the reason that was left him did not enable him to resist,' and are therefore not conclusive as to his responsibility or power to control his actions."
>
> "The omission to charge as requested, with regard to the letter written by Rodel, is subject to the same considerations, and may be dismissed with only this further remark, that persons of most decided insanity often exhibit consistency of purpose, coolness, and even great ingenuity in the pursuit of some insane object to which they are impelled by the diseased condition of mind with which they are afflicted. An inspection of the letter, however, shows that it is pervaded by a very abnormal degree of excitement; and we think the judge did quite right, even on this ground, to decline the unqualified instruction which was requested in relation to it."

It is to be noted that an examination of the letter addressed by Rodel to his wife indicates an attitude of mind very similar to that disclosed in the letters of Runk, which were offered in evidence. In each case there was the overpowering mental distress consequent upon the uncovering of financial irregularity, and in each case the mind of the deceased looked to the fund produced by insurance as a means of paying his debts and providing for his family. Such evidence, of course, indicates that some of the powers of the mind remained, but Mr. Justice Bradley, in the Rodel case, instead of from that drawing the conclusion of sanity, found in it the evidence of the un-

controllable impulse which is one of the characteristics of this form of insanity.

In Manhattan Life Insurance Company *vs.* Broughton, 109 U. S., 121, Mr. Justice Gray said:—

> "The remaining and the most important question in the case is whether a self killing by an insane person having sufficient mental capacity to understand the deadly nature and consequences of his act, but not its moral aspect and character, is a death by suicide within the meaning of the policy. This is the very question that was presented to this court in 1872 in the case of Life Insurance Co. *vs.* Terry, 15 Wall, 580. At that time there was a remarkable conflict of opinion in the courts of England, in the courts of the several States, and in the Circuit Courts of the United States, as to the true interpretation of such a condition. All the authorities agreed that the words 'die by suicide,' or 'die by his own hand,' did not cover every possible case in which a man took his own life, and could not be held to include the case of self destruction in a blind frenzy or under an overwhelming insane impulse. Some courts and judges held that they included every case in which a man, sane or insane, voluntarily took his own life. Others were of opinion that any insane self destruction was not within the condition."

Terry's case is then fully quoted from and reaffirmed, and Justice Gray then proceeded:—

> "The necessary effect of giving these instructions, after refusing to give the second instruction requested, was to rule that if the deceased intentionally took his own life, having sufficient mental capacity to understand the physical nature and consequences of his act, yet if he was impelled to the act by insanity which impaired his sense of moral responsibility, the company was liable. That the ruling was so understood by this court is apparent by the opening sentences of its opinion, on page 583, as well as by its conclusion, which, after a review of the conflicting authorities on the subject, was announced in these words:—
>
> " 'We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the

moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable.' Pages, 590, 591.

"In Insurance Company *vs.* Rodel, 95 U. S., 232, the same rule was expressly reaffirmed. In that case the Circuit Court declined to instruct the jury that the plaintiff could not recover if the assured knew that the act which he committed would result in death, and deliberately did it for that purpose; and instead thereof repeated to the jury the instructions of the Circuit Court in Terry's case, and the conclusion of the opinion of this court in that case, as above quoted."

And in the last judgment upon this subject, Connnecticut Mutual Life Insurance Company *vs.* Akens, 150 U. S., 468, which went up from the Western District of Pennsylvania, and in which the rulings of the circuit judge who tried the cause were affirmed, it appears from the report that the policy was dated January 14th, 1887, and Smith died by his own act on February 23d, 1887. The evidence having closed, the defendant requested the court to instruct the jury as follows:—

"*First.*—If the jury believe from the evidence in the case that Smith, the insured, destroyed his own life, and that at the time of the self destruction he had sufficient capacity to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case the plaintiff cannot recover on the policy sued on in this case.

"*Second.*—If the jury believe from the evidence that the self destruction of the said Smith was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action.

"*Third.*—If the jury believe from the evidence that Smith's life was ended February 23d, 1887, by means of laudanum poison administered by himself to himself, the plaintiff cannot recover on the policy sued on in this case, unless the jury believe also from the evidence that the self destruction aforesaid of said Smith was the direct result of disease or of accident occurring without his voluntary action.

* * * * * * * * *

"The court declined to give the first, second, and fourth instructions requested, and upon the third request instructed the jury as follows:—

" 'The third point is affirmed, with this exception: that if the act of self destruction was the result of insanity, and was with suicidal intent, and the mind of the insured was so far deranged as to have made him incapable of using a rational judgment in regard to the act he was about to commit, the defendant is liable; but if he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable. If from the evidence you believe that the insured, though excited or angry or depressed in mind from any cause, formed the determination to take his own life because in the exercise of his usual reasoning faculties he preferred death to life, then the defendant is not liable."

"To this qualification of the third instruction, as well as to the refusal to give each of the other instructions requested, the defendant excepted, and, after verdict and judgment for the plaintiff for the amount of the policy, sued out this writ of error."

In delivering the opinion and affirming the rulings of the Circuit Court, Mr. Justice Gray said:—

"This case is governed by a uniform series of decisions of this court, establishing that if one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, it is not a 'suicide,' or 'self destruction,' or 'dying by his own hand,' within the meaning of those words in a clause excepting such risks out of the policy, and containing no further words expressly extending the exemption to such a case.

Life Ins. Co. *vs.* Terry, 15 Wall, 580;
Bigelow *vs.* Berkshire Ins. Co., 93 U. S., 284;
Insurance Co. *vs.* Rodel, 95 U. S., 232;
Manhattan Ins. Co. *vs.* Broughton, 109 U. S., 121;
Connecticut Ins. Co. *vs.* Lathrop, 111 U. S., 612;
Accident Ins. Co. *vs.* Crandal, 120 U. S., 527.

"In the case at bar the first two instructions were exactly like those held to have been rightly refused, and the modified instruction given upon the third request was substantially like that held to have been rightly given in Terry's case, in which the words of exemption were 'die by his own hand.' That decision

was followed and approved in Rodel's case and Lathrop's case, in each of which the words were the same; and in Broughton's case, in which the words were 'die by suicide,' and the court, treating the two phrases as equivalent, expressed the opinion that 'the rule so established is sounder in principle, as well as simpler in application, than that which makes the effect of the act of self destruction, upon the interest of those for whose benefit the policy was made, to depend upon the very subtle and difficult question how far any exercise of the will can be attributed to a man who is so unsound of mind that, while he foresees the physical consequences which will directly result from his act, he cannot understand its moral nature and character, or in any just sense be said to know what it is that he is doing.' 109 U. S., 131.

* * * * * * * * *

"And in making out such proof the plaintiff is entitled to the benefit of the presumption that a sane man would not commit suicide, and of other rules of law established for the guidance of courts and juries in the investigation and determination of facts. Travellers' Insurance Co. *vs.* McConkey, 127 U. S., 661-667."

A reading of the rulings in the various courts in which these cases were tried, and the opinions of this court, show very clearly a different standard of insanity from that which must necessarily be accepted upon the definition of the learned judge who tried the present cause. In all these cases the impairment not only of the moral vision, but also of the *will*, so as to leave the deceased in a condition that he was *unable to resist* the impulse of self destruction, is accepted as an insanity or mental unsoundness sufficient to relieve him from the charge of felonious suicide. The recent case of Davis *vs.* United States, 165 U. S., 373, approves a definition of insanity which contains the element for which we contend.

"The term 'insanity' as used in this defense means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he is committing; or where, though conscious of it and able to distinguish between right and wrong and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control."

In this definition the *continued existence of a governing will* is recognized as essential to sanity as distinguished from insanity.

The charge of Judge Butler enforces a much stricter rule, and mental perception of consequences and mental consciousness of wrongfulness, irrespective of moral power to resist, according to the charge, was sufficient to place the deceased in the category of a felonious suicide. This inadequate statement of the rule, especially in the light of the evidence which had been adduced, was necessarily most damaging to the case of the plaintiff, and the point made is one which is best appreciated by comparing the charge of the learned judge delivered to the jury in this case, and appearing in full on pages 139-142 of the record, with the charges in the cases to which reference has been made and the opinions of the Supreme Court in affirming those charges. That the unfortunate man was within the class of those who are impelled to death by an insane and irresistible impulse which his weakened mental and moral powers could not withstand, is best evidenced by the letters to Darlington and Nice (pages 53 and 59 of the Record):—

> "My Dear Joseph:
>
> "I have grossly deceived you and can only pay my debts by my life. * * * This is a sad ending of a promising life; but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this."
>
> "William:
>
> "Do all you can for Mrs. Runk and see that I have a quiet funeral. I am driven to this, but I have tried to be a friend to you. Don't talk to any one."

When these letters, written on October 5th, 1892, the day of his death, are read in connection with a letter written the day before to his friend, George C. Thomas (page 123 of the Record), in the closing paragraph of which he alludes to a young nephew of Mr. Thomas, whose death by suicide was announced in the morning paper:—

> "I do not know what to say in regard to the news in the morning paper concerning J. B. M. It is certainly a sad ending, and,

as we all know, the young man has gone his own way, regardless of all the influences and interest which you and Mrs. Thomas, as well as others, have tried to have over him."

To a morbidly sensitive mind such as that which Runk undoubtedly had, whose normal tone was lost in the depression and mortification consequent upon the circumstances detailed at length in the testimony of Mr. Darlington (pages 97–102 of the Record), the suggestion which came from the suicide of this young man—whom he knew well—was the impulse which, once started, carried him with irresistible force to his death. This aspect of moral insanity—an insanity whose distinguishing element was the impairment of "the governing power of the mind"—which was present in the facts of the case, and which is clearly and expressly recognized in the opinions of the Supreme Court already cited, was eliminated from the consideration of the jury by the charge of the court as given.

The eleventh assignment of error is as follows:—

"11. The learned court erred in charging the jury as follows: 'While I thus submit the question and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong.'"

In thus charging the jury the learned judge adopted a view of measure of proof necessary to satisfy a jury of insanity when offered as a defense to what is in effect a prosecution for felony, which does not accord with the views of this court as expressed in Davis *vs.* The United States, 160 U. S., 469. In that case it was held that while there is in the absence of evidence a presumption of sanity, yet when evidence has been adduced tending to show insanity so that the question of sanity or insanity is an issue to be determined by the jury upon the evidence before them, that then the burden of proof is upon the party who charges the commission of a crime not only to show the physical fact of the killing, but that the killing was done by one of sound mind. The failure to recognize this principle permeated the entire charge of the court below

and was emphasized in the instruction which is the subject of this assignment of error, an instruction which, given with the vigor which characterizes everything which comes from the bench presided over by the learned judge who tried the case, was the controlling force in securing the verdict for the defendant in the present case.

THIRD.—WAS THERE EVIDENCE TO GO TO THE JURY TENDING TO PROVE THAT PRIOR TO TAKING OUT THE POLICIES OF INSURANCE, RUNK HAD CONCEIVED THE FRAUDULENT DESIGN OF EFFECTING POLICIES TO THE END THAT HE MIGHT TAKE HIS OWN LIFE FOR THE BENEFIT OF HIS CREDITORS AND FAMILY?

This question is presented by the first, second, third, and fourth assignments of error.

These assignments were as follows:—

"*First.*—The admission of the evidence of Ralph F. Culinan contained in the following offer:—

" 'MR. JOHNSON:—I propose to prove the date anterior to the issuance of this policy of the appropriation of Mr. Runk of the securities of the City Mission in his hands as treasurer.

" '(Objected to, on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one's own life.)

" 'THE COURT:—This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time. The court will have to hear it, and reserve for after consideration what weight it should have, or whether it should have any. We may be asked to rule it out, and, if so, we will consider it.)'

"*Second.*—The admission of the evidence of William G. Hopper contained in the following offer:—

" 'MR. JOHNSON:—I propose to prove that this witness is a creditor of the estate to the amount of $7756.88, which credit is due to him in the course of speculative stock transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely.'

"*Third.*—The refusal of the court to affirm plaintiffs' first point, which point was as follows:—

" 'The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evi-

denced by the policies sued upon with the intention of defrauding the company defendant issuing the same.'

"*Fourth.*—The refusal of the court to affirm plaintiff's second point, which point was as follows:—

" 'The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide.' "

Evidence similar to that covered by the first and second assignments was subsequently admitted, all of which is open to the same objection, but was not specifically objected to in view of the rulings of the court which are assigned for error.

These assignments may be properly considered together, because they raise the question whether there was any evidence in the cause which would have justified the jury in finding that the policies in suit had been taken out by William M. Runk with the fraudulent purpose of ending his life by his own hand.

The evidence offered and admitted under objection, referred to in the first and second assignments of error, and all the similar evidence following it, might have been competent had it been followed by other evidence tending to show that the suicidal intent had been formed in November, 1891. No such further evidence was offered, and the plaintiff was entitled to an unqualified affirmance of his first and second points, mentioned in the third and fourth assignments.

In discussing this branch of the case we desire to be understood as fully admitting the proposition of law that if William M. Runk obtained the issue of the policies in suit with the then formed purpose of ending his life by suicide, no recovery can be had on the policies. The law upon this point has been very accurately stated in Smith *vs.* National Benefit Society, 123 N. Y., 85, in which the court said:—

"In answer to the plaintiff's demand for the sum payable by the defendant's policy of life insurance, the company took upon itself the difficult burden of proving that the assured perpetrated a deliberate fraud, planned upon a broad scale, and accomplished by taking his life. That his efforts to achieve success failing,

and a future of poverty and debt seeming to await him, he determined to secure a large insurance upon his life, appropriated to the payment of his creditors and the comfort and support of his relatives, and reach the result by suicide. The difficult burden was successfully borne, as a verdict of the jury has determined, and the sole inquiry now is whether the scope and range of the evidence admitted, showing the acts and declarations of the assured, transcended the lawful limit or violated the rules of evidence." * * * After reviewing the evidence, showing that the intent to commit suicide was clearly formed prior to the issuing of the policies, the court said:—

"These acts and declarations all occurred before the plaintiff took his policy as collateral, and when they affected no one but Tyler himself. They tended to show the origin and progress of the fraudulent intent, the manner of its growth, and the motives from which it sprung. They indicate a sane and deliberate purpose, moving steadily to its result, and constitute part of the history of the fraud. They were contemporaneous with the fraud in its formative stages. They accompany Tyler's efforts to raise money, which failed, and the procuring of an insurance upon his life which he knew he could not continuously maintain. They show the motive of the fraud and mark its progress, and harmonize so completely with all which afterward occurred as to constitute, with that, elements of a single transaction—the fraudulent conduct which raised the issue presented by the defendants; and so I think the proof came fairly within the rule relating to *res gesta*, and did not transcend its limit. Some of this evidence was resisted upon the ground that death by suicide was no defense under the terms of the policy. That is true; but the defense was fraud, and suicide the ultimate agent by which the fraud was accomplished. It was necessary, therefore, to prove it, and in such manner as to indicate that it was not an insane or sudden impulse, but the culmination and effective working out of a deliberately conceived purpose of fraud."

Upon establishing this proposition of fact, the defendant in opening principally rested its case. See opening of defendant's counsel, Record, 26, 27.

"Therefore when these policies were taken out he was insolvent to the extent, as I have said, of upwards of $350,000, and insolvent by being a defaulter, by having embezzled the funds of the charity of which he was the treasurer and of the firm to which he belonged.

"He appeared to be one of those men who would sooner face death than disclosure of his dishonor and his disgrace, and having at the time these policies were taken out some $250,000 to

> $300,000 of policies already on his life, which cost him from $10,000 to $12,000 a year to carry, but which were insufficient to pay his debts and to make good his embezzlements, he seemed to have conceived the idea of taking out additional insurance to the extent of some $200,000 more, making his total insurance from $450,000 to $500,000, for the purpose of raising a fund which, if the thing came to an end, as was certain, he could, by reason of his death, pay these creditors and pay these embezzlements, and so clear, as far as he could, his memory.
>
> "Therefore our claim is, that this was a deliberate attempt by a man in full possession of his faculties to defraud this insurance company by obtaining these policies to a large amount and then to commit suicide and have his estate collect for the benefit of these creditors the amount which he was a defaulter.
>
> "We will show that being, as I say, insolvent to that extent, having already some $10,000 to $12,000 per annum to pay to keep up these policies, he contracted these additional policies, including this $75,000, to the extent of $200,000, requiring him, an insolvent man, to pay about $8000 a year additional, and of course never intended that those payments, which could not last long, would last long, but that by his deliberate suicide he would end the payment of the premiums and acquire for his estate the amount of the policies."

The evidence adduced on behalf of the defendant absolutely failed to establish this defense. On the contrary, the fact is established that Runk's consent to the issue of the policies was wrung from him only by the most persistent importunity of an agent, who flattered the vanity of Mr. Runk and held before him the inducement that by taking these policies he would be the third largest insurer in the United States. (Record, pages 83, 84, 85.) The fact is also established that Runk took his life within a few hours after his partner, Darlington, had discovered and disclosed to Runk his knowledge of certain irregularities which Runk had been guilty of in the conduct of the business of Darlington, Runk & Co.; but these irregularities were almost entirely committed after the issue of the policies in suit, and after charging the aggregate amount of moneys covered by them, Runk was still a solvent partner on the books of the firm, so that the circumstances which precipitated his death had no existence in the preceding year, when the policies were

taken out. It is true that there was evidence of irregular conduct upon Runk's part, as treasurer of the City Mission, which ran back for a number of years prior to his death, but there was no evidence to justify the conclusion that in November, 1891, his embarrassments had in any way rendered him desperate, or even were calculated to cause despair; on the contrary, in November, 1891, Mr. Runk's interest in Darlington, Runk & Co. was much more than sufficient to pay his debt to the City Mission, and his only other debt—that to his aunt, Mrs. Barcroft—was then fully secured by life policies taken out many years before.

Indeed the evidence so clearly showed that the inducing causes of the suicide were in fact all occurring within a week of Runk's death, on October 4th, 1892, that in submitting the case to the jury the prominent issue submitted was not the issue of fraud in the inception of the policies, but that of sanity at the time of death. This is shown by the charge of the court to the jury. Record, page 139, &c.

The court expressly limited the issue as follows (Record, page 139): "The only question therefore for consideration is this question of sanity. There is nothing else in the case. The only question is whether or not he was in a sane condition of mind, or whether his mind was so impaired that he could not understand the character and consequence of the act he was about to commit." Thus the question of fraud in taking out the policy having dropped from the case from the failure of the defendant in any degree to maintain the defense in this issue, the court below, when requested to do so by defendant's first and second points, should have so instructed the jury. The refusal of the court to affirm these points was in substance saying to the jury that there was evidence of fraud in the inception of the policy, and thus submitting to the jury a question which would have warranted them in finding a verdict for the defendant if they chose to consider the evidence upon that point sufficient, because, as has been said above, it is not denied that if the evidence on

that point were sufficient for submission to the jury, such evidence would warrant a finding for the defendant, inasmuch as such fraud would defeat the plaintiff's right to recover. It was, therefore, clearly the duty of the court not only to affirm the plaintiff's first and second points, but in express terms to withdraw from the consideration of the jury all evidence which had been admitted under the defendant's offer to show fraud in the inception of the contract.

In Waldron *vs.* Waldron, 156 U. S., 361, the court said:—

"We come now to the last contention, which is this, that, conceding misuse was made of the record and other evidence, yet, as the misuse was corrected by the final charge of the court, therefore the error was cured. Undoubtedly it is not only the right but the duty of a court to correct an error arising from the erroneous admission of evidence when the error is discovered, and when such correction is made it is equally clear that, as a general rule, the cause of reversal is thereby removed."

State *vs.* May, 4 Dev. (Law), 330;
Goodnow *vs.* Hill, 125 Mass., 587, 589;
Smith *vs.* Whitman, 6 Allen, 562;
Hawes *vs.* Gustin, 2 Allen, 402, 406;
Dillin *vs.* People, 8 Michigan, 257, 369;
Specht *vs.* Howard, 16 Wall, 564.

"There is an exception, however, to this general rule, by virtue of which the curative effect of the correction, in any particular instance, depends upon whether or not, considering the whole case and its particular circumstances, the error committed appears to have been of so serious a nature that it must have affected the minds of the jury, despite the correction by the court. The rule and its exception were considered in Hopt *vs.* Utah, 120 U. S., 430, 438, where the foregoing authorities were cited, and the principle was thus stated by Mr. Justice Field: 'But, independently of this consideration as to the admissibility of the evidence, if it was erroneously admitted its subsequent withdrawal from the case with its accompanying instruction cured the error. It is true that in some instances there may be such strong impressions made upon the minds of the jury, by illegal and improper testimony, that its subsequent withdrawal will not remove the effect caused by its admission; and in that case the original objection may avail on appeal or writ of error. But such instances are exceptional.' "

Under this ruling it was, as has been said, clearly the duty of the trial judge, as far as lay in his power, to remove from the minds of the jury the impression which must have been created by the testimony in question. That testimony occupied the first two days of the trial of the case, and was of a kind which would naturally leave a deep impression upon the minds of jurymen. A vicious attack was made upon the method of life of Mr. Runk, his various speculative transactions were fully ventilated, his relations with the church and Sunday-schools, and his embezzlement of certain sums of money intrusted to him for one of these institutions were held up before the jury as evidences of hypocrisy, dishonesty, and double dealing. Counsel for the defendant made full reference to this testimony in his argument to the jury, and every inference calculated to inflame the minds of the jury against the plaintiff's case was drawn from it, and the jury were asked to balance the rights of the parties as between creditors created by the kinds of speculation and conduct which this testimony showed and the insurance company, which was now asked to pay the amount of the policies, the proceeds of which should go to meet this indebtedness. At the conclusion of an argument of this kind it was clearly the duty of counsel for the plaintiff to ask the court, inasmuch as the evidence had failed to maintain the proposition of fraud in support of which it was offered, to expressly withdraw the question from the jury. The refusal to do so, it is submitted, was clearly grave error.

If the only issue in this cause was the sanity or insanity of Runk at the time of his death, the plaintiff was entitled to have this issue submitted without the introduction of evidence immaterial to the issue of sanity, but which might have been material in the issue of fraud in taking out the policy.

In a very recent case, R. R. Co. *vs.* O'Reilly, 158 U. S., 334, a judgment was reversed for permitting immaterial evidence to go to a jury, the injurious effect of which was much less apparent than that admitted in this case, Mr. Justice Shiras saying:—

"It is impossible to say that the defendant's case was not injuriously affected by the admission of the evidence, and while an appellate court will not disturb a judgment for an immaterial error, yet it should appear beyond a doubt that the error complained of did not and could not have prejudiced the rights of the party duly objecting."

Deery *vs.* Tray, 5 Wall, 795;
Gilmer *vs.* Higley, 110 U. S., 47.

The case of the plaintiff in error therefore shows:—

First.—An erroneous instruction that suicide avoided the obligation to pay under the policies, even though no condition or clause was inserted in the contract.

Second.—An erroneous instruction calculated to mislead the jury as to what is sanity or mental unsoundness within the meaning of the law in cases of this class.

Third.—Clear error in submitting to the jury the question of fraud in the taking out of the policies, there being no evidence tending to support such a finding.

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